

## **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION  
:   
vs. :   
:   
ROBERT WENDELL LANDIS : NO. 14-379

PHILADELPHIA, PENNSYLVANIA

JULY 22, 2015

BEFORE: THE HONORABLE STEWART DALZELL, J.

CHANGE OF PLEA HEARING

APPEARANCES:

OFFICE OF THE UNITED STATES ATTORNEY  
BY: ROBERTA BENJAMIN, ESQUIRE  
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Eastern District of Pennsylvania  
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Counsel for the Government

THE HUGHES FIRM, LLC  
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(Transcript produced by machine shorthand via C.A.T.)

1     IN ATTENDANCE:

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          Adam Sucheski  
          Federal Bureau of Investigation

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1 (Proceedings commenced at 9:30 a.m.)

2 THE COURT: Good morning, everyone.

3 ALL COUNSEL: Good morning, Your Honor.

4 THE COURT: We are together in United States of  
5 America versus Robert Wendell Landis, which is Criminal  
6 Number 14-379, and representing the Government, as she has  
7 from the beginning, is Roberta Benjamin.

8 MS. BENJAMIN: Good morning, Your Honor.

9 THE COURT: Nice to see you again.

10 And the case agent is Adam Sucheski of the FBI.

11 THE AGENT: Yes, sir.

12 THE COURT: Welcome to our court.

13 THE AGENT: Thank you, sir.

14 THE COURT: And representing Mr. Landis is Evan  
15 Hughes.

16 MR. HUGHES: Good morning, Your Honor.

17 THE COURT: And, Mr. Landis, welcome back. So are  
18 we ready to proceed?

19 MR. HUGHES: Yes, Judge.

20 THE COURT: Okay, so if the defendant could come  
21 forward.

22 ROBERT WENDELL LANDIS, DEFENDANT, SWORN.

23 THE COURT: And your name is Robert Wendell,  
24 W-E-N-D-E-L-L, Landis, L-A-N-D-I-S?

25 THE DEFENDANT: Yes.

1           THE COURT: And, Mr. Landis, you understand the  
2 English language?

3           THE DEFENDANT: Yes.

4           THE COURT: And do you read and write the English  
5 language?

6           THE DEFENDANT: Yes.

7           THE COURT: And you understand, sir, that you're  
8 under oath now?

9           THE DEFENDANT: Yes.

10          THE COURT: And that means that you must tell me the  
11 truth. Understand?

12          THE DEFENDANT: Yeah.

13          THE COURT: And not to rattle sabers at you, but  
14 just to tell you what the story is, if you were to lie to me  
15 this morning, that would be perjury or false swearing.  
16 Understand?

17          THE DEFENDANT: Yes.

18          THE COURT: And, of course, you have retained Mr.  
19 Hughes to be your lawyer; correct?

20          THE DEFENDANT: Yeah.

21          THE COURT: And, Mr. Hughes, how long have you and  
22 Mr. Landis been considering the possibility of a nontrial  
23 resolution of this matter?

24          MR. HUGHES: We have considered it from the outset  
25 of representation.

1 THE COURT: And that was when?

2 MR. HUGHES: It was --

3 THE DEPUTY CLERK: In March.

4 MR. HUGHES: March, Your Honor.

5 THE COURT: Okay. So let's put it this way, Mr.

6 Landis. Since Mr. Hughes has been representing you, have you  
7 at any time been on any drugs or narcotics?

8 THE DEFENDANT: No.

9 THE COURT: And since Mr. Hughes has been your  
10 lawyer in this matter, have you ever seen a psychiatrist,  
11 psychologist, or mental health provider?

12 THE DEFENDANT: No.

13 THE COURT: And are you on any medication that a  
14 doctor prescribes for you that in any way affects how you  
15 think?

16 THE DEFENDANT: No.

17 THE COURT: So I take it -- and you've never been  
18 treated for alcohol abuse?

19 THE DEFENDANT: No.

20 THE COURT: And I take it the Government has no  
21 concerns about competency?

22 MS. BENJAMIN: That's correct, Your Honor.

23 THE COURT: And you have no concerns, not that  
24 you're a psychiatrist --

25 MR. HUGHES: I do not, Your Honor.

1 THE COURT: So everyone is comfortable with Mr.  
2 Landis' capacity to proceed?

3 MR. HUGHES: Yes.

4 THE COURT: And, Mr. Landis, how far did you get in  
5 school?

6 THE DEFENDANT: I have a GED.

7 THE COURT: A GED?

8 THE DEFENDANT: Yeah.

9 THE COURT: And where did you obtain that?

10 THE DEFENDANT: I attained it when? In 2003.

11 THE COURT: Okay. And what school issued that GED?

12 THE DEFENDANT: North Penn School District.

13 THE COURT: Okay, and that's in what county?

14 THE DEFENDANT: I believe it's Montgomery County.

15 THE COURT: Okay. And, of course, you have a  
16 perfect right to retain Mr. Hughes as your lawyer, but I'm  
17 obliged to tell you that if you could not afford his services,  
18 do you understand that I would appoint a lawyer to represent  
19 you for free?

20 THE DEFENDANT: Yes.

21 THE COURT: And that's because you have a right to a  
22 lawyer at every step of the way in your criminal case, through  
23 trial and any appeal. And through today, are you completely  
24 satisfied with the services that Mr. Hughes has given you?

25 THE DEFENDANT: I'm satisfied with Mr. Hughes, yes.

1           THE COURT: Okay, and so you understand that if you  
2 couldn't afford to pay for Mr. Hughes' services, I would  
3 appoint a lawyer to represent you for free?

4           THE DEFENDANT: Yes.

5           THE COURT: Okay. Now, on three occasions, I'm  
6 going to ask Ms. Benjamin to come forward. And each time that  
7 happens, I want you to listen very carefully to what she says  
8 and what I say to her, because you and I will then consider  
9 subjects that are raised by my conversation with the  
10 prosecutor on each occasion. So won't you gentlemen be  
11 seated.

12           And, Ms. Benjamin, if you can come forward and  
13 rehearse for us the charges that Mr. Landis is contemplating  
14 pleading guilty to this morning, give us the elements of the  
15 offenses and the statutory penalties associated with those  
16 offenses.

17           MS. BENJAMIN: Certainly, Your Honor. The Plea  
18 Agreement that we've entered into contemplates that the  
19 defendant, Mr. Landis, will plead guilty to Counts One, Two,  
20 and Three of the Third Superseding Indictment, and those  
21 counts charge one count of possession, that's Count One, of  
22 child pornography and Counts Two and Three charge receipt of  
23 child pornography.

24           THE COURT: So the elements of Count One are what?

25           MS. BENJAMIN: The elements of Count One would be



1 that the defendant knowingly possessed one or more books,  
2 magazines, periodicals, films, videotapes, or other matter  
3 which contained a visual depiction; two, that the visual  
4 depiction had been mailed, shipped, or transported in  
5 interstate commerce by any means, including by computer, or  
6 which was produced using materials which had been mailed,  
7 shipped, or transported in interstate commerce; three, that  
8 the production of such visual depiction involved the use of a  
9 minor engaging in sexually explicit conduct; and, four, that  
10 the visual depiction was of such conduct.

11 THE COURT: And Count Two.

12 MS. BENJAMIN: Counts Two and Three are receipt of  
13 child pornography and the elements that are required are, one,  
14 that the defendant received or distributed a visual depiction;  
15 two, that the image depicts an actual minor engaged in  
16 sexually explicit conduct; and, three, that the defendant was  
17 aware of the sexually explicit nature and character and  
18 materials and that the visual depictions are of a minor  
19 engaging in sexually explicit conduct, and that the images  
20 have been mailed, shipped, or transported in interstate or  
21 foreign commerce, or produced these materials that have been  
22 mailed, shipped, or transported in interstate or foreign  
23 commerce.

24 THE COURT: And the statutory penalties associated  
25 with those counts.

1 MS. BENJAMIN: The statutory penalties associated  
2 with the possession count is a maximum of ten years of  
3 imprisonment, no mandatory minimum of imprisonment, but a  
4 mandatory minimum period of five years supervised release up  
5 to a lifetime of supervised release, a \$250,000 fine, and a  
6 mandatory \$100 special assessment.

7 Counts Two and Three each, the defendant can receive  
8 a maximum of 20 years imprisonment with a mandatory minimum  
9 period of five years imprisonment, a mandatory minimum period  
10 of five years of supervised release up to lifetime supervised  
11 release, a \$250,000 fine, and \$100 mandatory special  
12 assessment.

13 THE COURT: So the total statutory exposure is what?

14 MS. BENJAMIN: 50 years imprisonment with a  
15 mandatory minimum of five years imprisonment, lifetime  
16 supervised release, \$750,000 fine, and a \$300 special  
17 assessment, and there's also a forfeiture notice where there's  
18 one computer.

19 THE COURT: So the forfeiture concerns the hardware?

20 MS. BENJAMIN: Yes, the computer itself that he was  
21 using.

22 THE COURT: But not any cash?

23 MS. BENJAMIN: No.

24 THE COURT: Okay. All right. Thank you very much.

25 MS. BENJAMIN: Thank you.

1           THE COURT: So, Mr. Landis, if you can come back to  
2 the lectern and, of course, Mr. Hughes, you're welcome to join  
3 him.

4           Mr. Landis, sir, did you hear everything Ms.  
5 Benjamin just said to me?

6           THE DEFENDANT: Yes.

7           THE COURT: And you understood what she said?

8           THE DEFENDANT: Yes.

9           THE COURT: And even though you're contemplating  
10 pleading guilty to these three charges in Counts One, Two, and  
11 Three this morning, I, nevertheless, am obliged to go over  
12 with you certain basic rights every defendant has in a trial  
13 even though that's not your intention this morning.

14           First of all, if we had gone to trial, you would  
15 have heard me say over and over again to the jury that the law  
16 presumes you innocent. Understand?

17           THE DEFENDANT: Yes.

18           THE COURT: And I would tell the jury that they  
19 could only convict you of any of these three counts if the  
20 Government had proved you guilty beyond a reasonable doubt.  
21 Understand?

22           THE DEFENDANT: Yes.

23           THE COURT: And, indeed, the reason I asked Ms.  
24 Benjamin to give us all the elements of these offenses is  
25 because I would tell the jury that all 12 members of that jury

1 would have to agree unanimously that the Government had proved  
2 each and every element beyond a reasonable doubt. Understand?

3 THE DEFENDANT: Yes.

4 THE COURT: And if we had gone to trial, it would be  
5 up to you to decide whether to testify. Understand?

6 THE DEFENDANT: Yes.

7 THE COURT: And if you elected not to testify, as  
8 you have a right to do, I would tell the jury that, A, they  
9 couldn't hold it against you, and, B, they couldn't even  
10 discuss the fact that you had elected not to plead guilty.  
11 Understand?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, of course, if you had wanted to,  
14 and it would be your decision to make, not Mr. Hughes -- if  
15 you wanted to tell your side of the story, you could do so.  
16 Understand?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, in addition, if I accept your  
19 guilty plea this morning, we will have no motion practice  
20 having to do with the evidence-gathering phase of this case.  
21 In this case, there were a number of search warrants executed,  
22 and as I understand it from the Government's submission to me,  
23 you yourself talked to some of the case agents. Am I correct  
24 about that?

25 THE DEFENDANT: Yes.

1           THE COURT: And sometimes defendants file what's  
2 called motions to suppress either the physical evidence, in  
3 this case, the electronic images, or the statements that  
4 defendants make, but you understand that Mr. Hughes will not  
5 be filing any such motions on your behalf if I accept your  
6 plea. Understand, sir?

7           THE DEFENDANT: Yes.

8           THE COURT: And so if we had gone to trial, you  
9 understand that Mr. Hughes would be permitted to cross-examine  
10 each and every witness that the Government would call against  
11 you. Understand?

12          THE DEFENDANT: Yes.

13          THE COURT: And I'm sure that would be a very  
14 thorough cross-examination, but if we don't have a trial,  
15 there's going to be no cross-examination. Understand?

16          THE DEFENDANT: Yes.

17          THE COURT: And, in addition, if we had gone to  
18 trial, Mr. Hughes could have subpoenaed witnesses to come in  
19 to the case as your witnesses, character witnesses, for  
20 example, but if there's no trial, Mr. Hughes won't be  
21 subpoenaing anybody. Understand?

22          THE DEFENDANT: Yes.

23          THE COURT: And I just want to pause here to make  
24 100 percent certain of what is maybe an obvious point. And  
25 that is this, Mr. Landis. This decision to plead guilty, am I

1 correct that this is your free choice?

2 THE DEFENDANT: Yes.

3 THE COURT: And am I correct that you talked about  
4 the case with Mr. Hughes and he answered all your questions?

5 THE DEFENDANT: Yes.

6 THE COURT: To your satisfaction?

7 THE DEFENDANT: Yes.

8 THE COURT: And so I want to be absolutely sure of  
9 this. Am I correct that no one has, in any way, shape or  
10 form, forced you to plead guilty? Am I right about that?

11 THE DEFENDANT: That's correct.

12 THE COURT: So this is your free choice?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, that has some consequences, because  
15 if the jury found you guilty of any of these three counts, Mr.  
16 Hughes could have argued first to me and, if I ruled against  
17 you, to the U.S. Court of Appeals that the verdict was against  
18 the weight of the evidence. But if you plead guilty, the  
19 issue of your factual guilt as to these three counts will be  
20 off the table for the simple reason that you will have  
21 admitted that, "Yes, I committed these three crimes."  
22 Understand?

23 THE DEFENDANT: Yes.

24 THE COURT: So the issue of your factual guilt as to  
25 these three offenses will be off the table because you will

1 have admitted that, "Yes, I did it"; correct?

2 THE DEFENDANT: Yes.

3 THE COURT: And so do you have a copy of the Guilty  
4 Plea?

5 MR. HUGHES: I do, Your Honor.

6 THE COURT: And it was signed today?

7 MR. HUGHES: It was, Judge.

8 THE COURT: Okay, but the Acknowledgment of Rights  
9 had been signed, I think, on July 9th; right?

10 MR. HUGHES: Yes, Your Honor, and a fresh copy was  
11 re-executed today.

12 THE COURT: Okay, so they were just executed this  
13 morning?

14 MR. HUGHES: Correct.

15 THE COURT: So, Mr. Landis, is that your signature  
16 on the last page of the Guilty Plea Agreement?

17 THE DEFENDANT: Yes.

18 THE COURT: And before you signed that document, you  
19 went over it with Mr. Hughes?

20 THE DEFENDANT: Yes.

21 THE COURT: And he explained it to your  
22 satisfaction?

23 THE DEFENDANT: Yes.

24 THE COURT: And so you had no questions about its  
25 meaning?

1 THE DEFENDANT: No.

2 THE COURT: And, Mr. Hughes, just for the record,  
3 that's your signature?

4 MR. HUGHES: It is, Your Honor, on both the  
5 Acknowledgement of Rights and the Guilty Plea.

6 THE COURT: Okay. Mr. Hughes, if you would be good  
7 enough to read the very last paragraph of that agreement into  
8 the record.

9 MR. HUGHES: That would be paragraph 14?

10 THE COURT: Yes.

11 MR. HUGHES: "It is agreed that the parties' Guilty  
12 Plea Agreement contains no additional promises, agreements or  
13 understandings other than those set forth in this written  
14 Guilty Plea Agreement and that no additional promises,  
15 agreements or understandings will be entered into unless in  
16 writing and signed by all parties."

17 THE COURT: Okay. And you understand that, Mr.  
18 Landis?

19 THE DEFENDANT: Yes.

20 THE COURT: And that's true?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay, this is the only agreement you  
23 have with the U.S. Government; correct?

24 THE DEFENDANT: Correct.

25 THE COURT: Okay. So what I want to do now, even



1    though I'm sure Mr. Hughes did a very thorough job of going  
2    over the Plea Agreement with you, I want to ask Ms. Benjamin  
3    to come forward, and for the second time, I want you to listen  
4    very carefully. Even though this may be old hat for you at  
5    this late date, it's so important. The issue of this Guilty  
6    Plea Agreement is so important to you that I want to make  
7    absolutely 100 percent sure that you understand it. Okay?

8           THE DEFENDANT: Yes.

9           THE COURT: So won't you gentlemen be seated.

10          And, Ms. Benjamin, if you will come forward and  
11    rehearse for us the essential terms of this Plea Agreement.

12          MS. BENJAMIN: The essential terms of the Plea  
13    Agreement are that the defendant will plead guilty to Counts  
14    One, Two, and Three of the Third Superseding Indictment, and  
15    that the Government, at the time of sentencing, will move to  
16    dismiss Counts Four and Five of the Third Superseding  
17    Indictment. The Government will move for an upward variance  
18    from the Guideline range which is calculated for Counts One,  
19    Two, and Three.

20          THE COURT: Because that is an offense level 28.

21          MS. BENJAMIN: That's correct, Your Honor.

22          THE COURT: Under paragraph 8.

23          MS. BENJAMIN: That's correct. The calculations,  
24    obviously, are finalized by the Probation Department and  
25    eventually Your Honor. But the calculations we have put the

1 Guideline range, the anticipated Guideline range below the C  
2 plea amount that we're proposing, which is 90 months  
3 incarceration.

4 THE COURT: So to that extent, because the bottom of  
5 that, assuming he's Criminal History I --

6 MS. BENJAMIN: Right.

7 THE COURT: -- is 78 months.

8 MS. BENJAMIN: 78 to 87, I believe, is the range  
9 that we're anticipating.

10 THE COURT: Yes.

11 MS. BENJAMIN: So if that were the case, then we've  
12 agreed in the Plea Agreement that a specific sentence of 90  
13 months would be appropriate, and if that's the case, it would  
14 require the Government to move for an upward variance and for  
15 Your Honor to agree to that. So that's why that's in --

16 THE COURT: But Mr. Landis has agreed to that under  
17 the Agreement?

18 MS. BENJAMIN: Yes, he has, Your Honor.

19 THE COURT: Because the specific sentence of 90  
20 months is a C plea; correct?

21 MS. BENJAMIN: That's correct, Your Honor.

22 THE COURT: All right. Now, as I understand it,  
23 under a C plea -- which, of course, I will take very  
24 seriously, but, nevertheless, I will still want the benefit of  
25 a presentence investigation report before I accept it. But as

1 I understand it, if I accept the C plea at 90 months and  
2 impose that and a fine in my discretion, and, of course, the  
3 special assessment of \$300, there's nothing to appeal or  
4 collaterally attack; correct?

5 MS. BENJAMIN: That's correct. There is one more  
6 aspect to this. We've agreed in the Plea Agreement that a  
7 minimum of ten years supervised release -- up to a lifetime,  
8 but a minimum of ten years of supervised release with the 90  
9 months imprisonment, Your Honor. That was one other aspect of  
10 the C plea.

11 THE COURT: Okay, so you've agreed on a ten-year  
12 supervised release period?

13 MS. BENJAMIN: Minimum.

14 THE COURT: Minimum.

15 MS. BENJAMIN: A minimum, yes.

16 THE COURT: Okay. And the fine is in my discretion.

17 MS. BENJAMIN: Yes, Your Honor.

18 THE COURT: Which, of course, will be based on the  
19 ability to pay.

20 MS. BENJAMIN: That's correct.

21 THE COURT: But am I not correct that other than the  
22 issue of Mr. Hughes' representation in connection with this  
23 proceeding and this Plea Agreement, there would be no  
24 collateral attack or direct appeal if I accept the agreed-upon  
25 sentence?

1 MS. BENJAMIN: That is correct, Your Honor.

2 THE COURT: Okay. And, of course, the Plea  
3 Agreement also provides that Mr. Landis understands the  
4 obligations imposed on him under SORNA, which basically are  
5 lifetime obligations; right?

6 MS. BENJAMIN: It could be up to lifetime, yes, Your  
7 Honor. It depends upon the state in which he eventually  
8 lives.

9 THE COURT: What is the case in Pennsylvania?

10 MS. BENJAMIN: It depends -- first the crime has to  
11 be categorized, and depending upon what it is categorized as,  
12 I think that will determine whether or not, you know, what the  
13 requirement would be for -- and there are a lot of different  
14 factors that go into that. The fact that he's actually  
15 pleaded to possession and receipt, from my understanding,  
16 since there were other acts involved, that may color some of  
17 what they do in terms of --

18 THE COURT: "They" being the Commonwealth?

19 MS. BENJAMIN: I believe it's through the state. I  
20 think it is through the state, yes, Your Honor.

21 THE COURT: As opposed to the federal government.

22 MS. BENJAMIN: That's correct.

23 THE COURT: Because under SORNA, that's a federal  
24 law.

25 MS. BENJAMIN: Right. I think it is controlled by

1 the state, though. I know if someone moves from one state to  
2 another, it can change, and that's where you have to register  
3 in another state and they reevaluate and make a new  
4 determination. They can make a new determination.

5 THE COURT: Under the federal law, you have three  
6 business days to do that.

7 MS. BENJAMIN: Right.

8 THE COURT: Okay. Thank you.

9 MS. BENJAMIN: Thank you. There are other  
10 stipulations, obviously, in the Plea Agreement as to the  
11 Guidelines and how we get --

12 THE COURT: And that's what comes to a net offense  
13 level of 28.

14 MS. BENJAMIN: Right.

15 THE COURT: And that's why the upward variance is  
16 required.

17 MS. BENJAMIN: That's correct, Your Honor.

18 THE COURT: Okay, so let me talk with Mr. Landis  
19 and, of course, Mr. Hughes.

20 So, Mr. Landis, you heard everything Ms. Benjamin  
21 said?

22 THE DEFENDANT: Yes.

23 THE COURT: And you understood what she said?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, I am sure that Mr. Hughes, being

1 the able defense counsel he is, did a very thorough job of  
2 explaining what's going to happen with going forward to the  
3 time of your sentencing under this Agreement, but I just want  
4 to go through this because it's so important and it's a little  
5 different because this is a so-called C plea where there's an  
6 agreed-upon disposition of the 90 months and at least ten  
7 years supervised release and the fine in my discretion and  
8 \$300 special assessment.

9           So as I was saying to Ms. Benjamin, you understand  
10 that one of the consequences of pleading guilty will be that  
11 you will be subject to a federal law dealing with sex  
12 offenders in cases like yours. Understand?

13           THE DEFENDANT: Yes.

14           THE COURT: And no one is sure how long that  
15 obligation is going to be, but it could be up to a lifetime,  
16 and if you move from state to state after your release from  
17 custody, you'll have to comply with cognate laws from the  
18 various states where you live. Understand?

19           THE DEFENDANT: Yes.

20           THE COURT: And I don't know what Pennsylvania is  
21 going to do, because that's not my job, but it's onerous, and  
22 as long as you're subject to the federal law, you have three  
23 business days to amend where you live and where you work and  
24 things like that. Understand?

25           THE DEFENDANT: Yes.

1           THE COURT: And I take it you've talked about these  
2 registration laws with Mr. Hughes?

3           THE DEFENDANT: Yes.

4           THE COURT: And he explained them to you?

5           THE DEFENDANT: Yes.

6           THE COURT: Okay. Now, even though my presumption  
7 is that I'm going to accept the agreed-upon disposition, I'm  
8 going to defer definitively doing that until the time of  
9 sentencing when I get what's called a presentence  
10 investigation report from a probation officer. And you'll see  
11 a draft of that presentence investigation report before I do,  
12 as will Mr. Hughes, as will Ms. Benjamin and Agent Sucheski.  
13 And it may well be that all the comments that people make  
14 about the draft of the probation officer, the probation  
15 officer will accept, and if that happens, when we get back  
16 together again for sentencing, I will have, shall we say, a  
17 clean presentence investigation report. But it sometimes  
18 happens that either the defendant or the Government make  
19 comments that the probation officer does not accept, and if  
20 that happens, at the time of sentencing, which will be in  
21 October, I will do my best to decide who I think is right and  
22 who I think is wrong. And just because the probation officer  
23 works for the Court does not mean that I will just rubber  
24 stamp whatever he or she writes. In real world cases, I've  
25 agreed with defendants and disagreed with probation officers,

1 and if that happens, typically the sentence is less onerous.  
2 Sometimes I agree with the Government and disagree with the  
3 probation officer, and if that happens, it ups the ante, if  
4 you will. And then in many, many cases, I do agree with the  
5 probation officer and disagree with whichever side takes  
6 exception to it.

7 Now, everything I'm talking about -- and Ms.  
8 Benjamin mentioned what's called an upward variance. What  
9 she's talking about is we have an Advisory Guideline range in  
10 your case of 78 to 87 months, assuming you have no criminal  
11 conduct in your past, and if that is correct, the agreed-upon  
12 sentence of 90 months is greater than that Advisory Guideline  
13 range. And under your Plea Agreement, that's okay with you to  
14 sentence you at 90 months plus the ten years supervised  
15 release and the fine that I impose in my discretion plus the  
16 \$300 assessment. Am I correct that that's okay with you?

17 THE DEFENDANT: Yes.

18 THE COURT: But sentencing in federal court is very  
19 complicated business, and I just want to stress to you that  
20 while I presume that I'm going to accept the Plea Agreement  
21 and the disposition proposed by Mr. Hughes and the Government,  
22 and there is a very high likelihood that is going to happen, I  
23 nevertheless don't have to. Understand?

24 THE DEFENDANT: Yes.

25 THE COURT: I could take another look at that and



1 say, "No, this is not right," and in that case, you could  
2 appeal that and you could withdraw your guilty plea.  
3 Understand?

4 THE DEFENDANT: Yes.

5 THE COURT: And supervised release, I want to talk  
6 about that. This is in addition to the SORNA obligation under  
7 federal law. Supervised release, which will in your case last  
8 for at least ten years, is a serious form of custody even  
9 though it's not jail-type custody. You'll have a probation  
10 officer, it will be somebody different from the one who writes  
11 the report, and you'll be subject to a number of rules, such  
12 as occupational limitations that keep you from working with  
13 minors; such as a duty to report to your probation officer  
14 whenever he or she says so; such as that you're not going to  
15 commit another crime; and, also, that you will be paying your  
16 financial obligations in accordance with the installments that  
17 I impose at the time of judgment. Understand?

18 THE DEFENDANT: Yes.

19 THE COURT: And I just have to point out to you that  
20 those financial obligations are very serious and you have to  
21 comply with the schedule that I ultimately impose when we get  
22 together in October to talk about your sentence. Understand?

23 THE DEFENDANT: Yes.

24 THE COURT: And, again, I'm not rattling sabers at  
25 you, but if you violate any rule of supervised release and

1 after a hearing, I find that you didn't have a good reason to  
2 do that, you could go back to jail. Understand?

3 THE DEFENDANT: Yes.

4 THE COURT: So supervised release is a serious form  
5 of custody even though it's not jail-type custody.

6 Now, one other wrinkle. Ms. Benjamin talked about  
7 something called forfeiture. Forfeiture is a very ancient  
8 principle that actually goes back to the Old Testament, and  
9 the idea is if property, in your case, computers, iPhone and  
10 iPads that were used, was used in the commission of a crime,  
11 in this case, a federal crime, that property automatically  
12 becomes property of the sovereign, in this case, the United  
13 States of America. Understand?

14 THE DEFENDANT: Yes.

15 THE COURT: So forfeiture is basically guilty  
16 property, if you will, and it belongs to the sovereign, in  
17 this case, the United States of America. Understand?

18 THE DEFENDANT: Yes.

19 THE COURT: And so that's clear to you?

20 THE DEFENDANT: Yes.

21 THE COURT: All right, so for the third and last  
22 time, I'm going to ask Ms. Benjamin to come forward and what  
23 I'm going to ask her to do now is to rehearse what the  
24 Government's evidence would have been as to these three counts  
25 if we had gone to trial. So it's going to be a summary, and I

1 take it you've read the Government's memorandum that recites  
2 those facts?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay, and you've gone over it with him?

5 MR. HUGHES: I have, Your Honor.

6 THE COURT: Okay. So, Ms. Benjamin, if you can come  
7 forward.

8 MS. BENJAMIN: I just wanted to clarify before they  
9 leave the podium, if I may, Your Honor?

10 I believe when you spoke with me, you mentioned an  
11 adjusted offense level of 28. And, actually, the way it's  
12 calculated, we believe it might be a level 26 and there may be  
13 a criminal history category of II and that's where we arrived  
14 at the projected Guideline range. I just wanted the record to  
15 be clear.

16 THE COURT: Okay, but I'm just taking what's in the  
17 Plea Agreement, the 28 I calculated.

18 MS. BENJAMIN: It's actually 26. There's a  
19 reduction of two points because it did not involve -- in  
20 paragraph b, he did not intend to traffic in or distribute  
21 such material. So that's two levels lower. So that's where  
22 it becomes 26 in the Plea Agreement.

23 THE COURT: Okay. Okay, but I'm just going what's  
24 on the page.

25 MS. BENJAMIN: Yes. Yes, Your Honor.

1           THE COURT: Okay, so anything else from the  
2 Government?

3           MS. BENJAMIN: No, thank you.

4           THE COURT: So do you want to rehearse the evidence?

5           MS. BENJAMIN: Certainly.

6           THE COURT: Okay, won't you gentlemen be seated and  
7 listen very carefully, Mr. Landis, to what Ms. Benjamin is  
8 going to recite for us.

9           MS. BENJAMIN: A summary of what the Government  
10 would have presented had this gone to trial would include  
11 testimony from a minor victim who is now an adult. The  
12 testimony from --

13          THE COURT: Who was 15 at the time.

14          MS. BENJAMIN: 15 at the time, yes, Your Honor.

15          THE COURT: From back in 2012.

16          MS. BENJAMIN: That's correct, Your Honor. And  
17 testimony also from FBI agents and forensic experts, as well  
18 as individuals from Facebook and NCMEC or The National Center  
19 for Missing and Exploited Children.

20               The case came about -- and this would be the  
21 testimony. In October of 2012, Facebook notified NCMEC, who  
22 notified the FBI, that they had suspicious Facebook chats in  
23 which a 27-year-old male, who was later identified as the  
24 defendant, was communicating with a minor and was talking  
25 about various sexual activities and also there was some

1 discussion of sending pics, often known as child pornography,  
2 sort of an abbreviation for child pornography, from the minor  
3 to the defendant.

4 Further investigation, and there would be testimony  
5 about this, showed that the defendant, as I indicated, was the  
6 27-year-old male who was involved in this --

7 THE COURT: Was at the time 27?

8 MS. BENJAMIN: That's correct, was involved in these  
9 Facebook chats and also with receipt of this child pornography  
10 from the minor.

11 In particular, search warrants were executed on  
12 Yahoo, as well as Facebook, and information was received that  
13 showed that the 15-year-old female had sent messages with  
14 child pornography images on March 22nd, 2012, to certain  
15 specific e-mail accounts of the defendant. They're noted on  
16 page 4 of the Government's Change of Plea Memorandum.  
17 Feliciah96@yahoo.com to the defendant at xtictac22@yahoo.com,  
18 and that relates to Count Two of the Third Superseding  
19 Indictment. And, also, similar sort of CP or child  
20 pornography images were sent on July 20 of 2012 from the minor  
21 using a different e-mail account, feliciah47ram@gmail.com, to  
22 the defendant at a different e-mail account,  
23 yourfantasy1207@yahoo.com, and that makes the basis for Count  
24 Three of the Third Superseding Indictment.

25 The possession charge on the Third Superseding

1 Indictment, Count One, has the return date on the Yahoo search  
2 warrant of March 26, 2012, as the date on which we know for  
3 certain that the defendant possessed the child pornography.  
4 And this, again, is discussed on page 4 of the Government's  
5 memorandum.

6           So, as I indicated, a search warrant was executed on  
7 Facebook and hundreds and hundreds of Facebook chats, some of  
8 which I think Your Honor has seen, and they were inappropriate  
9 discussions between an adult, the defendant, and the minor  
10 victim at the time. And the chats were reviewed, and on  
11 page 5 of the memorandum, it gives sort of an indication of an  
12 example of one of those chats that occurred on April 29th,  
13 2012, in which the defendant is asking again for pics. So he  
14 is requesting from the minor the pics and then the pics were,  
15 of course, sent. And these pics were of sexual exploitation,  
16 a lascivious exploitation of the minor, and they were sent  
17 from the minor to the defendant. So those were the receipts.

18           THE COURT: And the minor at the time was in Chester  
19 County?

20           MS. BENJAMIN: Yes, in Chester County, Pennsylvania.

21           THE COURT: And later moved to Georgia.

22           MS. BENJAMIN: Georgia. And there was still  
23 communication between the minor and the defendant based on  
24 telephonic records we received, at least 79 times during the  
25 period in this 2012 period where she had moved, and by the end

1 of the summer of 2012, there was still communication with the  
2 defendant.

3           There was also -- I itemized most, if not all, on  
4 pages 5, 6, and 7 of my memorandum of the description of the  
5 images and I won't repeat them for the record unless Your  
6 Honor wants me to.

7           THE COURT: No, I read them and I think Mr. Landis  
8 read them.

9           MS. BENJAMIN: Yes, Your Honor, just for the record,  
10 so it's clear in terms of numbers of pictures in what we were  
11 talking about in this instance. Further investigation  
12 revealed that the defendant communicated with the minor and  
13 met the minor. There was a communication on computer, iPhone,  
14 iPad, as well as there was a Gateway computer, which is  
15 mentioned in the forfeiture count of the Indictment, and that  
16 is specified with a particular serial number and that's the  
17 item that we're asking forfeiture of with respect to that  
18 item.

19           In addition, there was a diary that the minor at the  
20 time kept in which the defendant's name appears and there's  
21 various designations that corroborate the sexual activity that  
22 they engaged in.

23           And, finally, Your Honor, the Government would  
24 present evidence that the defendant was interviewed -- we  
25 might not or might not at trial -- in which he admits to

1 knowing the girl eventually and also the e-mail accounts that  
2 were his.

3 THE COURT: So to that extent, they were admissions.

4 MS. BENJAMIN: Yes, Your Honor.

5 THE COURT: Okay. Anything else?

6 MS. BENJAMIN: No, thank you.

7 THE COURT: Thank you.

8 So, Mr. Landis, if you can come back and, Mr.  
9 Hughes, of course, you're welcome to join him.

10 So, Mr. Landis, did you hear everything Ms. Benjamin  
11 just said to me?

12 THE DEFENDANT: Yes.

13 THE COURT: And you understood what she said?

14 THE DEFENDANT: Yes.

15 THE COURT: And, of course, there was reference to  
16 the written document and you've read the written document that  
17 the Government supplied me --

18 THE DEFENDANT: Yes.

19 THE COURT: -- which gives more detail and  
20 supplements what Ms. Benjamin just read? You read that;  
21 correct?

22 THE DEFENDANT: Yes.

23 THE COURT: And you understood it?

24 THE DEFENDANT: Yes.

25 THE COURT: So let me ask you this. May I rely on



1 the truth of what Ms. Benjamin just said to me and put in the  
2 factual basis in her memorandum?

3 THE DEFENDANT: Yes.

4 THE COURT: So let me put it to you affirmatively.  
5 May I rely on the truth of what was said just now and in the  
6 written submission?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay, so I may rely on that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right, let me ask the Government a  
11 couple of things before I accept your plea.

12 Ms. Benjamin, on this record, is the Government  
13 satisfied that this plea is knowing, voluntary, and  
14 intelligent?

15 MS. BENJAMIN: Yes, Your Honor.

16 THE COURT: And is there any subject that you  
17 believe I should go over with Mr. Landis that I may have  
18 overlooked?

19 MS. BENJAMIN: The only thing I can think about,  
20 Your Honor, or contemplate is the Missouri --

21 THE COURT: Pardon me?

22 MS. BENJAMIN: The only thing I'm thinking about is  
23 the Missouri versus Frye issue, because there was an earlier  
24 plea offer, a written plea offer. It was with a different  
25 attorney, but it was a lower plea offer that was rejected. I

1 just thought the record should reflect that there was an  
2 earlier plea. We, in fact, came to court thinking that it was  
3 going to be a guilty plea hearing with Tom Bellwoar as his  
4 counsel.

5 THE COURT: But that's ancient history.

6 MS. BENJAMIN: That is ancient history. That's the  
7 only thing I can contemplate. But other than that, Your  
8 Honor, there's nothing else.

9 THE COURT: Okay. Mr. Hughes, you've been living  
10 with this case for many months now as retained counsel. Are  
11 you satisfied that your client's plea is knowing, voluntary,  
12 and intelligent as to these three charges?

13 MR. HUGHES: It is, Judge.

14 THE COURT: Okay. And am I correct that you gave  
15 Mr. Landis a preview of what I would cover in this proceeding?

16 MR. HUGHES: I did.

17 THE COURT: Okay. So, Mr. Landis, let me ask you  
18 this since Mr. Hughes gave you a preview of what I covered  
19 this morning. We've covered a lot of ground, to be sure.

20 Notwithstanding the fact that Mr. Hughes gave you  
21 this preview, do you have any questions of me about what we  
22 talked about?

23 THE DEFENDANT: No.

24 THE COURT: So you feel you understand what we  
25 talked about this morning?

1 THE DEFENDANT: Yes.

2 THE COURT: The very important reason why we get  
3 together at such length is because this is such an important  
4 part of your future. Understand?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay, so you have no questions of me?

7 THE DEFENDANT: No.

8 THE COURT: All right. Well, I am now prepared to  
9 make certain formal findings and I'm going to do so now.

10 First of all, I find that the defendant, Robert  
11 Wendell Landis, is competent to plead. There is not an iota  
12 of doubt in that department; that Mr. Landis' plea is  
13 voluntary and not the result of force or threats or any  
14 promises apart from what's contained in the Plea Agreement  
15 that we've gone over at length on this record.

16 I also find that there is an ample factual basis for  
17 the plea of guilty as to the three charges, that Mr. Landis  
18 understands those three charges, his legal rights, and the  
19 maximum statutory penalties, as well as the likelihood of a  
20 five-year mandatory minimum penalty under the C plea.

21 I find, too, that if I accept the C plea, Mr. Landis  
22 waives his rights to an appeal and very much limits his right  
23 to collateral attack of that sentence if I indeed accept the  
24 90-month sentence in the C plea.

25 So I think we're ready to take the plea. Mrs.

1 Adler.

2 THE DEPUTY CLERK: Robert Wendell Landis, you have  
3 previously entered a plea of not guilty to the Third  
4 Superseding Indictment in Criminal Number 2014 379, charging  
5 you with possession of child pornography, in violation of  
6 Title 18, United States Code, Section 2252(a)(4)(B), and  
7 receipt of child pornography, in violation of Title 18, United  
8 States Code, Section 2252(a)(2).

9 How say you now as to Counts One, Two, and Three,  
10 guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: All right, and I will order that  
13 presentence investigation report to assist me in evaluating  
14 the C plea, and I will set as the time for sentencing, Friday,  
15 October 23, 2015, at 11 a.m., in this courtroom. I take it  
16 there's no objection to the detention continuing?

17 MR. HUGHES: No objection, Your Honor.

18 THE COURT: Okay. Anything else from the  
19 Government?

20 MS. BENJAMIN: No. Thank you very much, Your Honor.

21 THE COURT: Thank you all very much for your hard  
22 work and we'll look forward to seeing you in October.

23 MR. HUGHES: Thank you, Your Honor.

24 MS. BENJAMIN: Thank you, Your Honor.

25 (Proceedings concluded at 10:30 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of the proceedings in the above-entitled  
matter.

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Kathleen Feldman, CSR, CRR, RPR, CM  
Official Court Reporter

Date: \_\_\_\_\_

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